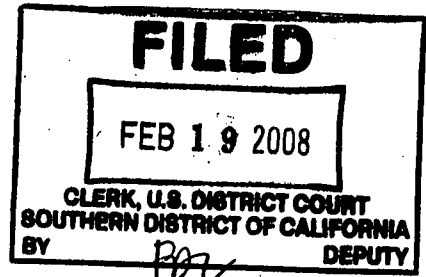


ORIGINAL

ADRIENNE C. PUBLICOVER (SBN 161432)
MICHAEL K. BRISBIN (SBN 169495)
WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP
525 Market Street, 17th Floor
San Francisco, CA 94105
Telephone: (415) 433-0990
Facsimile: (415) 434-1370



Attorneys for Defendants
AMERICAN GENERAL LIFE INSURANCE COMPANY
erroneously sued as AMERICAN GENERAL LIFE COMPANIES,
and AMERICAN GENERAL ASSURANCE COMPANY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 0319



DEBORAH L. ZAPPA, an individual,
Plaintiff,

v.

AMERICAN GENERAL LIFE
INSURANCE COMPANIES, AMERICAN
INSURANCE ADMINISTRATORS, and
AMERICAN GENERAL ASSURANCE
COMPANY, and DOES 1 through 20,

Defendants.

Case No.

NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. § 1441
PURSUANT TO 28 U.S.C. § 1332
(DIVERSITY)

TO THE CLERK OF THE ABOVE ENTITLED COURT:

PLEASE TAKE NOTICE that DEFENDANTS AMERICAN GENERAL LIFE
INSURANCE COMPANY erroneously sued as AMERICAN GENERAL LIFE COMPANIES,
and AMERICAN GENERAL ASSURANCE COMPANY (collectively "DEFENDANTS")
herby remove this action to the United States District Court for the Southern District of
California, San Diego Division, pursuant to 28 U.S.C. sections 1332, 1391, 1441 and 1446 on the
grounds that there is complete diversity of citizenship between Plaintiff DEBORAH L. ZAPPA

1
NOTICE OF REMOVAL OF CIVIL ACTION UNDER
28 U.S.C. § 1441 PURSUANT TO 28 U.S.C. § 1332 (DIVERSITY)

USDC SDCA Case #
325007.1

CR

1 ("ZAPPA"), who is a citizen of California and a resident of San Diego, California, and
 2 AMERICAN GENERAL LIFE INSURANCE COMPANY ("AGLIC") who is a resident of
 3 Texas, with its principal place of business in Houston, Texas; and AMERICAN GENERAL
 4 ASSURANCE COMPANY ("AGAC") who is a resident of Illinois, with its principal place of
 5 business in Neptune, New Jersey; and AMERICAN INSURANCE ADMINISTRATORS
 6 ("AIA") who is a resident of Ohio, with its principal place of business in Columbus, Ohio.

7 The amount in controversy exceeds the jurisdictional minimum of \$75,000.00 required
 8 by Section 1332(a), as the life insurance policy benefit at issue is \$500,000.00.

9 I declare, under penalty of perjury, under the laws of the State of California that the
 10 foregoing facts are true on the date of filing this Notice of Removal, as more fully set forth
 11 below.

12 1. On December 12, 2007, Plaintiff ZAPPA filed in the Superior Court of the State
 13 of California, County of San Diego, a civil action entitled *Deborah L. Zappa, Plaintiff v.*
 14 *American General Life Companies, American Insurance Administrators, American General*
 15 *Assurance Company, and Does 1-20, Defendants*, Case Number 37-2007-00083735 CU IC CTL
 16 ("The Complaint").

17 2. The first date upon which DEFENDANTS AGLIC and AGAC received a copy of
 18 the Complaint or notice of the lawsuit was January 21, 2008, when the Complaint was served on
 19 DEFENDANTS' agent for service of process in California. A true, correct, and complete, copy
 20 of the summons and complaint served on DEFENDANTS' Agent, plus the Proof of Service, is
 21 attached hereto as **Exhibit A**. Each and every allegation stated in the Complaint is incorporated
 22 by reference into this Notice for purposes of removal.

23 3. 28 U.S.C. Section 1446(b) states, in part, "The notice of removal of a civil action
 24 or proceeding shall be filed within thirty days after receipt by the defendant, through service or
 25 otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action
 26 or proceeding is based....."

1 4. Thirty days have not passed since service of the Complaint on DEFENDANTS'
2 agent on January 21, 2008 and therefore this matter remains removable to the District Court.

3 5. DIVERSITY JURISDICTION: This is a civil action over which this Court has
4 original jurisdiction under 28 U.S.C. Section 1332, and is one which may be removed to this
5 Court by DEFENDANTS AGLIC and AGAC pursuant to the provisions of 28 U.S.C. Section
6 1441(b) in that it is a civil action between citizens of different states and the amount in
7 controversy exceeds the sum of \$75,000, exclusive of interest and costs, as demonstrated by the
8 following:

9 (a) The citizenship of the fictitiously named DEFENDANTS identified as DOES 1
10 through 20 in the Complaint, should be disregarded for the purposes of this removal. *See Fristoe*
11 *v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) and 28 U.S.C. Section 1441(a).

12 (b) Plaintiff alleges in the Complaint that she is a resident of San Diego, California
13 (*See Complaint at paragraph 2*). DEFENDANTS AGLIC and AGAC are informed and believe,
14 and there on allege, that Plaintiff remains a resident and citizen of the State of California as of
15 the date of this removal filing.

16 (c) Defendant AGLIC is at the time of this filing, and remains, a resident of Texas, is
17 a Texas corporation, with its principal place of business in Houston, Texas; AGAC is at the time
18 of this filing, and remains, a resident of Illinois, with its principal place of business in Neptune,
19 New Jersey; and DEFENDANTS AGLIC and AGAC are informed and believe, and there on
20 allege, that at the time of this filing, DEFENDANT AIA is and remains, a resident of Ohio, with
21 its principal place of business in Columbus, Ohio.

22 (d) This Court's jurisdictional minimum, an amount in controversy in excess of
23 \$75,000 is satisfied because the Court may, for removal purposes, look to the removal papers for
24 underlying facts establishing the jurisdictional limit. *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th
25 Cir. 1992). A removing defendant must show by a preponderance of the evidence that the
26 plaintiff's claim exceeds the jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102
27 F.3d 398, 403-404 (9th Cir. 1996).

Plaintiff's lawsuit seeks to recover life insurance policy benefits of \$500,000.00 under AGAC life insurance policy number G-500,728 (*See paragraphs 14, 41, 43, & Prayer in Complaint*). Plaintiff claims entitlement to the policy proceeds and also seeks bad faith and punitive damages (*See Prayer in Complaint*). Plaintiff also claims attorney's fees which will be incurred to obtain life insurance benefits for her (*See, Prayer in Complaint*). If attorney's fees are recoverable by Plaintiff, the fee claim is included in determining the amount in controversy. *Goldberg v. CPC Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982). As shown above, the combination of claimed life insurance benefit, other claimed damages, and attorney's fees sought by Plaintiff in this action, taken together, establish that the amount in controversy more than exceeds the jurisdictional minimum of \$75,000 as required by Section 1332(a). As the damages sought by Plaintiff exceed this Court's jurisdictional limit, and as the parties are of diverse citizenship, removal is proper.

6. Venue is proper in the Southern District of California, San Diego Division, pursuant to 28 U.S.C. Section 1391(a) (3) because Plaintiff ZAPPA is subject to personal jurisdiction in San Diego County, which is part of this judicial district. (*See Complaint at paragraph 2*). Also, venue is proper under 1441(a) which states, in part, "...any civil action may be removed ... to the district court of the United States for the district and division embracing the place where such action is pending." San Diego County is within the jurisdiction of the Southern District of California, San Diego Division.

7. Therefore, DEFENDANTS file this Notice of Removal of action from the Superior Court of the State of California, County of San Diego, in which it is now pending, to the United States District Court for the Southern District of California, San Diego Division.

8. True and correct copies of all process, pleadings, orders and documents pertaining to this action (and which have been served upon DEFENDANTS AGLIC and/or AGAC, **Exhibit A**, or which were served or filed by DEFENDANTS AGLIC and/or AGAC in this action, **Exhibit B**) are attached hereto. DEFENDANTS AGLIC and AGAC are informed and believe, and thereon allege, that other than the pleadings attached to this notice of removal, there have

1 been no further pleadings, process, or orders filed in this action or served upon DEFENDANTS
2 AGLIC or AGAC.

3 9. A Notice to the State Court and Adverse Party is being simultaneously filed with
4 the Superior Court of the State of California, County of San Diego and will be served on Plaintiff
5 and other defense counsel forthwith.

6 10. Pursuant to the local rules I contacted Gregory Kane, plaintiff's counsel, on
7 February 15, 2008 to discuss removal of this matter since diversity exists between the parties and
8 the amount in question exceeds the jurisdictional minimum. As of this filing I have not heard
9 from Mr. Kane.

10 I also contacted John Boyle, of Carroll, Burdick & McDonough, attorneys for
11 DEFENDANT AIA, on February 19, about removing this matter to Federal Court. Mr. Boyle
12 stated AIA has no objection and agrees to the removal. I informed Mr. Boyle of AIA'S
13 obligation to file a joinder pleading and expect that AIA will file said document no later than
14 Wednesday, February 20, 2008.

15 11. As required, each DEFENDANT will file its responsive pleading no later than 10
16 days following removal of this action to the United States District Court, Southern District, San
17 Diego Division.

18
19 Dated: February 19, 2008 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

20
21 By: 

22 ADRIENNE C. PUBLICOVER
23 MICHAEL K. BRISBIN
24 Attorneys for Defendants
25 AMERICAN GENERAL LIFE INSURANCE
26 COMPANY erroneously sued as AMERICAN
27 GENERAL LIFE COMPANIES, and AMERICAN
28 GENERAL ASSURANCE COMPANY

CERTIFICATE OF SERVICE

I am a citizen of the United States. I am over the age of eighteen years and am not a party to the within cause. I am employed in the City and County of San Francisco, California and my business address is 525 Market Street, 17th Floor, San Francisco, California 94105.

On this date I served the following document(s):

**NOTICE OF REMOVAL OF CIVIL ACTION UNDER
28 U.S.C. § 1441 PURSUANT TO 28 U.S.C. § 1332 (DIVERSITY)**

on the part(y)(ies) identified below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

XXX: By First Class Mail -- I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection and delivery to the addressee(s) below following ordinary business practices.

By Personal Service -- I caused each such envelope to be given to a courier messenger who personally delivered each such envelope to the office of the address.

By Overnight Courier -- I caused each such envelope to be given to an overnight mail service at San Francisco, California, to be hand delivered to the office of the addressee on the next business day.

XXX: Facsimile -- (Only where permitted. Must consult CCP §1012.5 and California Rules of Court 2001-2011. Also consult FRCP Rule 5(e). Not currently authorized in N.D.CA.)

Gregory C. Kane, Esq.
SHIFFLET, KANE & KONOSKE, LLP
16880 West Bernardo Drive, Suite 250
San Diego, CA 92127-1615
Tel: (858) 385-0871
Fax: (858) 613-0871

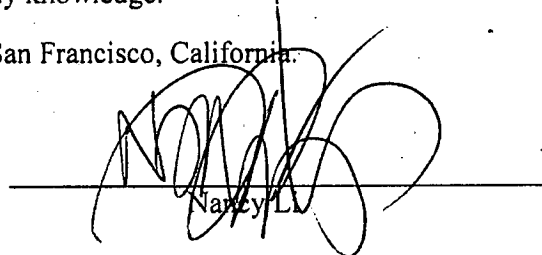
John D. Boyle, Esq.
Miguel Hernandez, Esq.
CARROLL, BURDICK & McDONOUGH LLP
633 West 5th Street, 51st Floor
Los Angeles, CA 90071
Tel: (213) 833-4500
Fax: (213) 833-4555

Attorneys for Plaintiff Deborah Zappa

Attorneys for Defendant American Insurance Administrators

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on **February 19, 2008** at San Francisco, California.



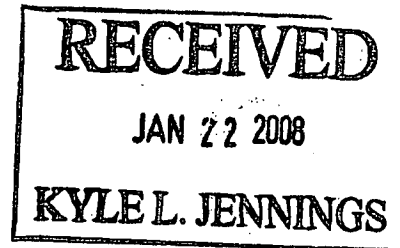
6
**NOTICE OF REMOVAL OF CIVIL ACTION UNDER
28 U.S.C. § 1441 PURSUANT TO 28 U.S.C. § 1332 (DIVERSITY)**

USDC SDCA Case #
325007.1

Exhibit A



CORPORATION SERVICE COMPANY



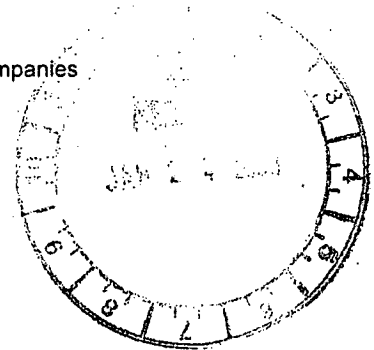
Notice of Service of Process

AHS / ALL
Transmittal Number: 5551395
Date Processed: 01/22/2008

Primary Contact: Kyle Jennings
AIG/American General Corporation
American General Life Div.
Floor 36 2929 Allen Parkway
Houston, TX 77019

Copy of transmittal only provided to: Linda Sanchez
Usulnee Wade

Entity:	American General Assurance Company Entity ID Number 2117533
Entity Served:	American General Assurance Company
Title of Action:	Deborah L. Zappa vs. American General Life Companies
Document(s) Type:	Summons/Complaint
Nature of Action:	Contract
Court:	San Diego Superior Court, California
Case Number:	37-2007-00083735-CU-IC-CTL
Jurisdiction Served:	California
Date Served on CSC:	01/21/2008
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Gregory C. Kane 858-385-0871



Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

View SOP Transmittal Detail

Page 1 of 2

SOP History Transmittal Detail

[View PDF](#)

Transmittal #: 5551395
 Entity: AMERICAN GENERAL ASSURANCE COMPANY
 Entity Id: 2117533
 Entity Served: AMERICAN GENERAL ASSURANCE COMPANY
 Title of Action: DEBORAH L. ZAPPA v. AMERICAN GENERAL LIFE COMPANIES
 Document(s) Type: Summons/Complaint
 Nature of Action: Contract
 Court: San Diego Superior Court
 Case #: 37-2007-00083735-CU-IC-CTL
 Jurisdiction Served In: California
 Date Served: 01/21/2008
 Answer or Appearance Due: 30
 Originally Served Upon: CSC
 How Served: PERSONALSERVICE
 Plaintiff's Attorney/Sender: Gregory C. Kane
 Plaintiff's Attorney/Sender Phone: 858-385-0871
 Enclosures: N/A

Client Requested Information: N/A

Transmittal Notes: N/A

Acknowledged By: N/A

Original Sent To:

Document	Papers sent via	Tracking Number	Contact Attn	Company Name	Address
SOP Original Transmittal	EDELIVERY		Kyle Jennings	AIG/American General Corporation	American General Life Div. Floor 36 2929 Allen ParkwayHouston TX 77019 USA

Copies Provided To:

Document	Papers sent via	Tracking Number	Contact Attn	Company Name	Address
SOP Transmittal Copy And Cover Letter			Linda Sanchez	AIG/American General Corporation	American General Life Div. Floor 36 2929 Allen ParkwayHouston TX 77019 USA
SOP Transmittal Copy And Cover Letter			Kyle	AIG/American General Corporation	American General Life Div. Floor 36 2929 Allen ParkwayHouston TX 77019 USA
SOP Transmittal Copy And Cover Letter			Usulnee Wade	American General Life Insurance Company	2929 Allen Parkway Suite AT 30-15Houston TX 77019 USA

View SOP Transmittal Detail

Page 2 of 2

Docket History:

Document	Papers sent via	Tracking Number	Contact Attn	Date Served	Transmittal
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Close

SUM-100

SUMMONS
(CITACION JUDICIAL)**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):

AMERICAN GENERAL LIFE COMPANIES, AMERICAN INSURANCE ADMINISTRATORS, AMERICAN GENERAL ASSURANCE COMPANY and DOES 1 through 20,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DEBORAH L. ZAPPA, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

F I L E - D

Clerk of the Superior Court

DEC 31 2007

By: S. Little, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
330 West Broadway
San Diego, CA 92101

CASE NUMBER: 37-2007-00083735-CU-IC-CTL
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

SHIFFLET, KANE & KONOSKE, LLP Tel: (858) 385-0871 Fax: (858) 613-0871
Gregory C. Kane, SBN: 095046 - 16880 West Bernardo Drive, Suite 250, San Diego, CA 92127

S. LITTLE

DATE: DEC 31 2007
(Fecha)Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): AMERICAN GENERAL ASSURANCE COMPANY

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☒ by personal delivery on (date): 1/21/08

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): GREGORY C. KANE SBN: 95046 16880 West Bernardo Dr., Suite 250 San Diego, CA 92127		CM-010 FOR COURT USE ONLY CIVIL BUSINESS OFFICE 10 CENTRAL DIVISION 2007 DEC 12 P 3:34 SAN DIEGO COUNTY, CA	
TELEPHONE NO.: (858)385-0871 FAX NO.: (858)613-0871 ATTORNEY FOR (Name): Deborah Zappa, Plaintiff			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 303 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Downtown Branch			
CASE NAME: DEBORAH L. ZAPPA v. AMERICAN GENERAL LIFE INSURANCE			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2007-00083735-CU-1C-CTL JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input checked="" type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **Four (4)**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: December 11, 2007
 Gregory C. Kane, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CIVIL CASE COVER SHEET

1 Gregory C. Kane, Esq. SBN 095046
 2 SHIFFLET, KANE & KONOSKE, LLP
 3 16880 West Bernardo Drive, Suite 250
 4 San Diego, CA 92127-1615
 5 Telephone: (858) 385-0871

6 Attorneys for Plaintiff, DEBORAH L. ZAPPA

FILED
 CIVIL BUSINESS OFFICE 20
 CENTRAL DIVISION

2007 DEC 12 P 3:34

CIVIL SUPERIOR COURT
 SAN DIEGO COUNTY, CA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN DIEGO

NST

10	DEBORAH L. ZAPPA, an individual,	)	Case No. 37-2007-00083735-CU-IC-CTL
11	Plaintiff,)	
12	vs.	)	COMPLAINT FOR BREACH OF
13	AMERICAN GENERAL LIFE COMPANIES,	)	CONTRACT, BREACH OF THE
14	AMERICAN INSURANCE ADMINISTRATORS,	)	IMPLIED COVENANT OF GOOD FAITH
15	and AMERICAN GENERAL ASSURANCE	)	AND FAIR DEALING, FRAUD AND
16	COMPANY, and DOES 1 through 20,	)	DECLARATORY RELIEF
17	Defendants.	)	I/C/J:
18		)	I/C/D:
19		)	Trial Date:
20		)	Complaint Filed:

21 COMES NOW, PLAINTIFF, DEBORAH L. ZAPPA, and alleges as follows:

22 I.

23 GENERAL ALLEGATIONS

24 1. That Plaintiff, Deborah L. Zappa, is the widow of
 25 Martin A. Zappa and the sole designated beneficiary of Martin A.
 26 Zappa as it pertains to a life insurance policy, which is the
 27 subject of this Complaint.

28 2. That at all times pertinent hereto, Deborah L. Zappa was
 a resident of the County of San Diego.

///

1 3. That Defendants herein named and DOES 1 through 10 were
2 business entities of an unknown type which were engaged in the
3 solicitation and sales of life insurance contracts within the State
4 of California, County of San Diego, and were doing business as
5 "insurance companies" in this jurisdiction and venue.

6 4. That Plaintiff herein is informed and believes that
7 Defendants, and each of them, including DOES 1 through 20, were the
8 agents, employees, principals, and employers of one another, and in
9 doing the things herein alleged, were all acting within the course
10 and scope of such agency and employment relationship with the
11 permission and consent of their co-defendants.

12 5. That the Defendants named herein, and DOES 1 through 10,
13 created a scheme to defraud consumers who had attended various
14 universities, including San Diego State University. Such scheme was
15 designed to offer to sell life insurance contracts to the alumni of
16 ~~said universities or colleges, take premiums for said life insurance~~
17 contracts, and then deny the benefits when the named insured passed
18 away, thereby wrongfully keeping premiums to their own profit and
19 depriving the beneficiaries of the proceeds of the life insurance
20 policies.

21 6. That the Defendants, and each of them, including DOES 1
22 through 10, created advertising material, including flyers, mailers,
23 and pamphlets, describing an alumni term life insurance policy at
24 greatly reduced rates with simplified application procedures.
25 Defendants, and each of them, obtained lists of alumni of various
26 universities, including San Diego State University, and mailed these
27 unsolicited offerings to the unsuspecting alumni.

28 ///

1 7. That Defendants, and each of them, including DOES 1
2 through 10, at all times never intended to actually honor any life
3 insurance policy contract they issued. It was their intent to
4 obtain premiums for life insurance policies and then deny benefits
5 on some technicality or other manufactured basis.

6 8. That the specific identity of the individual employees of
7 these various Defendants are better known to the Defendants
8 themselves, and the specific employees who initiated the mailing of
9 these unsolicited offerings were not identified to Plaintiff or the
10 deceased, Martin A. Zappa.

11 9. That in approximately January 2006, Plaintiff herein and
12 her husband, Martin A. Zappa, received a solicitation from
13 Defendants herein for the alumni term life insurance policy. On or
14 about February 10, 2006, Martin A. Zappa applied for one of the
15 alumni term life insurance policies with Defendants herein.

16 ~~10. That throughout the process of applying for the life~~
17 insurance policy, Defendant, American Insurance Administrators, and
18 DOES 1 through 5, acted as the coordinators of the process of
19 applying for the policy. They sent numerous requests to Martin A.
20 Zappa for additional information, every one of which Martin A. Zappa
21 complied with.

22 11. That Martin A. Zappa signed authorizations for the release
23 of his medical records, submitted to a modified physical
24 examination, gave blood and urine samples, provided a financial
25 statement, and complied with every single request from American
26 Insurance Administrators and DOES 1 through 5 to complete the
27 application for the insurance policy.

28 ///

1 12. That, on June 30, 2006, Defendants, American Insurance
2 Administrators and DOES 1 through 5, with full knowledge, consent
3 and as part of the scheme, sent an "Alumni Term 10/20 Life Plan
4 Portfolio" to Martin A. Zappa stating his application for insurance
5 had been accepted and "as long as we receive your premium in the
6 next thirty days, your coverage will be effective on July 15, 2006".

7 13. The application, all prepared in writing, was for a policy
8 limit of \$500,000. The June 30, 2006, correspondence in writing
9 from American Insurance Administrators confirmed a policy amount of
10 \$500,000.

11 14. The letter of June 30, 2006, which included the written
12 Alumni Term Life Plan Portfolio, stated a life insurance benefit of
13 \$500,000 was effective July 15, 2006, listing the insured as
14 Martin A. Zappa and the sole beneficiary as Deborah L. Zappa, wife.

15 15. That said letter of June 30, 2006, included a "statement
16 of account" with a statement for a "net amount due now, \$2,221.67".

17 16. That Plaintiff, Deborah L. Zappa, paid the full amount of
18 \$2,221.67 on July 18, 2006, well within the thirty (30) day time
19 limit as stated in the June 30, 2006, letter.

20 17. That on August 24, 2006, Martin A. Zappa died.

21 18. That on September 12, 2006, a proof of death claim was
22 signed by Deborah L. Zappa, and benefits were requested under the
23 policy which had been issued under Certificate No. 112-267891.

24 19. That on or about April 12, 2007, Defendant, American
25 General, on behalf of all Defendants and with the knowledge, consent
26 and ratification of all Defendants, denied the benefits due under
27 the life insurance contract to Deborah L. Zappa as the sole
28 beneficiary of Martin A. Zappa on a wrongful basis, all as part of

1 the scheme and plan by these Defendants to lure unsuspecting alumni
2 of state colleges and universities to pay premiums on a policy which
3 would later be denied.

4 20. That Plaintiff herein paid the full premium requested on
5 July 18, 2006, and Defendants, and each of them, have kept the full
6 amount of the premium, \$2,221.67, to their own benefit and to the
7 detriment to the Plaintiff herein, all as part of the preconceived
8 plan to defraud unsuspecting consumers from their money.

9 II.

10 BREACH OF CONTRACT

11 21. Plaintiff incorporates Paragraphs 1 through 20 herein by
12 reference as if fully set forth and incorporates the content thereof
13 herein.

14 22. That the Defendants, and each of them, did enter into a
15 written contract for life insurance for Martin A. Zappa, named
16 insured, with Deborah L. Zappa, the Plaintiff herein, as the sole
17 and exclusive beneficiary of said life insurance policy in the total
18 sum of \$500,000.

19 23. That Plaintiff and decedent Martin A. Zappa complied with
20 and performed every single requirement of them, both prior to the
21 issuance of the policy and as required under the terms of the policy
22 herein, specifically by submitting to medical evaluations, providing
23 authorizations for release of medical records, providing financial
24 statements, and paying the premium when due as required.

25 24. That the Defendants, and each of them, have breached the
26 contract of life insurance by wrongfully denying coverage and
27 depriving the Plaintiff herein of the benefits of the life insurance
28 policy.

1 25. Plaintiff herein has been damaged in that she has not
2 received the \$500,000 life insurance policy benefits which were
3 promised to her as part of the life insurance policy contract.

4 III.

5 BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

6 26. Plaintiff incorporates Paragraphs 1 through 25 herein as
7 if fully set forth and incorporates the content thereof in this
8 cause of action.

9 27. That implied in every written contract of insurance there
10 is an implied covenant of good faith and fair dealing which requires
11 all parties to the insurance contract to act in good faith and deal
12 fairly, so as to do nothing to interfere with the rights of the
13 parties to receive the benefits of the agreement.

14 28. That Defendants herein, and each of them, have breached
15 this implied covenant by reflexively denying coverage when a claim
16 is made, failing to adequately investigate the details of the claim,
17 and failing to respond in any manner to correspondence from the
18 insured seeking reconsideration of the denial of the claim.

19 29. That Defendants, and each of them, further breached the
20 implied covenant of good faith and fair dealing by devising the
21 scheme to offer to sell life insurance policies to the unsuspecting
22 alumni of the state colleges and universities, knowing they would
23 deny any and all benefits under any policy ever issued and that this
24 knowledge and practice was done when the beneficiaries were
25 particularly susceptible to being caused emotional distress
26 immediately following the death of their loved one.

27 30. That said practice of reflexively denying the claims out
28 of hand immediately following the death of a loved one when the

1 policy benefits are so sorely needed can only be described as
2 despicable conduct carried on by the Defendants with a willful and
3 conscious disregard of the rights of the Plaintiff herein; is
4 despicable conduct which subjects the Plaintiff herein to unjust
5 hardship in conscious disregard for her rights and furthers the
6 intentional misrepresentations of the Defendants, who knew full well
7 they were never going to honor a policy of life insurance they
8 offered to sell the Plaintiff herein, thereby depriving the
9 Plaintiff of her legal rights, resulting in injury.

10 31. That Plaintiff herein has suffered emotional distress by
11 reason of the aforesaid conduct on the part of the Defendants, and
12 each of them, in that she has been deprived of the financial
13 assistance the benefits of said life insurance policy would have
14 provided her upon the death of her husband.

15 32. That Plaintiff herein has suffered damage, including the
16 \$500,000 policy benefits which should have been paid to her.

17 33. That Plaintiff herein has suffered economic damage, in
18 that she has been compelled to retain counsel and enter into an
19 agreement to pay for an attorney to secure the benefits rightfully
20 due her under the policy of life insurance covering Martin A. Zappa,
21 all in an amount to be proven at the time of trial.

22 34. That the aforementioned conduct of the Defendants, and
23 each of them, constitutes oppression, malice, and fraud, causing the
24 Plaintiff loss of property, damage to her legal rights, and
25 otherwise causing injury, so as to justify an award of punitive
26 damages.

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IV.

FRAUD

35. Plaintiff incorporates herein Paragraphs 1 through 34 herein as if fully set forth and incorporates the content of said paragraphs.

36. That Defendants, and each of them, through their agents, employees, representatives, and others better known to Defendants, created a scheme to lure the alumni of the state colleges and universities to part with their money in the guise of selling life insurance policies, on which they knew they were going to attempt to avoid making any benefit payments.

37. That, as part of the scheme, the Defendants, and each of them, had prepared various advertising and solicitation documentation and had this documentation delivered to the alumni of state colleges and universities to pretend to solicit these alumni to purchase life insurance policies.

38. That the Defendants, and each of them, had this documentation sent to the Plaintiff and her husband herein.

39. That at the time the Defendants, and each of them, solicited the Plaintiff and her husband to apply for and pay for a life insurance policy, the Defendants, and each of them, had no intention whatsoever to honor the terms of the life insurance policy which was applied for.

40. That the Plaintiff and her husband applied for a life insurance policy, followed every direction and fulfilled every requirement of them as dictated by the Defendants herein, and each of them.

///

1 41. That Plaintiff and her husband were led to believe, and
2 justifiably relied upon the representations of the Defendants, and
3 each of them, that a policy of insurance would be in force, and
4 based upon that reliance, paid a premium of \$2,221.67 to secure the
5 policy of life insurance in the sum of \$500,000.

6 42. That the Plaintiff and her husband, at no time, had any
7 basis not to believe the promises and representations made by
8 Defendants, and each of them, and in good faith relied upon those
9 representations as being true. There was no way the Plaintiff and
10 her husband could have known the actual facts, to wit, the
11 Defendants never intended to honor the policy of insurance.

12 43. That in fulfillment of the Defendants' scheme, the
13 Defendants, and each of them, did wrongfully deny payment of the
14 benefits under the life insurance policy, thereby depriving the
15 Plaintiff herein of the \$500,000 life insurance benefit for which
16 she paid lawful consideration.

17 44. That, further, the Defendants herein have kept for their
18 use and benefit the sum of \$2,221.67 from July 18, 2006, through the
19 present time, thereby depriving the Plaintiff herein of the use of
20 the premium that she paid for the life insurance policy.

21 45. That the aforementioned conduct of the Defendants, and
22 each of them, constitutes intentional misrepresentation with the
23 intention on the part of the Defendants, and each of them, of
24 thereby depriving the Plaintiff of property and otherwise causing
25 injury, so as to justify an award of punitive damages.

26 ///

27 ///

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1 v.

2 DECLARATORY RELIEF

3 46. Plaintiff incorporates Paragraph 1 through 45 herein by
4 reference as if fully set forth and incorporates the content
5 thereof.

6 47. That the Plaintiff has sought benefits under the life
7 insurance policy for which she and her husband, Martin A. Zappa,
8 applied.

9
10 48. That Plaintiff and her deceased husband, Martin A. Zappa,
11 fulfilled all requirements of them as part of the process of
12 applying for and securing the policy of life insurance, including
13 providing all information after the report of claim was made.

14 49. That Defendants, and each of them, have now denied that
15 benefits are due and owing under the life insurance policy.

16 50. That this has created a dispute between the parties as to
17 whether or not the life insurance policy was in force and whether
18 or not there was any legal basis upon which to deny the benefits
19 otherwise due and owing under the policy.

20 51. Plaintiffs herein seek the judgment of this court to
21 declare the rights, duties, liabilities and obligations of the
22 parties under this relationship.

23 WHEREFORE, Plaintiff prays judgment as follows:

24 1. For payment of the life insurance proceeds in the sum of
25 \$500,000;

26 2. For interest on the life insurance proceeds from the time
27 they should have been paid to the present;

28 ///

1 3. For damages for emotional distress in the amount to be
2 proven at the time of trial;

3 4. For attorneys fees incurred to secure the benefits under
4 the life insurance policy;

5 5. For punitive damages in an amount to be proven at the time
6 of trial;

7 6. For costs incurred herein; and

8 7. For such other and further relief as the court may deem
9 proper.

10 DATE: December 12, 2007

SHIFFLET, KANE & KONOSKE, LLP

11
12 By: 

GREGORY C. KANE,
Attorneys for Plaintiff,
DEBORAH L. ZAPPA

CIV-050

- DO NOT FILE WITH THE COURT -
 -UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): GREGORY C. KANE 16880 West Bernardo Dr., Suite 250 San Diego, CA 92127		TELEPHONE NO.: (858)385-0871	FOR COURT USE ONLY CASE NUMBER: 37-2007-00083735-CU-IC-CTL
ATTORNEY FOR (name): DEBORAH L. ZAPPA, Plaintiff			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 303 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Downtown			
PLAINTIFF: DEBORAH L. ZAPPA DEFENDANT: AMERICAN GENERAL LIFE INSURANCE			
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)			

To (name of one defendant only): **AMERICAN GENERAL LIFE INSURANCE**Plaintiff (name of one plaintiff only): **DEBORAH L. ZAPPA**

seeks damages in the above-entitled action, as follows:

	AMOUNT
1. General damages	
a. <input type="checkbox"/> Pain, suffering, and inconvenience	\$ _____
b. <input checked="" type="checkbox"/> Emotional distress	\$ <u>1,000,000.00</u>
c. <input type="checkbox"/> Loss of consortium	\$ _____
d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only)	\$ _____
e. <input type="checkbox"/> Other (specify)	\$ _____
f. <input type="checkbox"/> Other (specify)	\$ _____
g. <input type="checkbox"/> Continued on Attachment 1.g.	
2. Special damages	
a. <input type="checkbox"/> Medical expenses (to date)	\$ _____
b. <input type="checkbox"/> Future medical expenses (present value)	\$ _____
c. <input type="checkbox"/> Loss of earnings (to date)	\$ _____
d. <input type="checkbox"/> Loss of future earning capacity (present value)	\$ _____
e. <input type="checkbox"/> Property damage	\$ _____
f. <input type="checkbox"/> Funeral expenses (wrongful death actions only)	\$ _____
g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only)	\$ _____
h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only)	\$ _____
i. <input type="checkbox"/> Other (specify)	\$ _____
j. <input type="checkbox"/> Other (specify)	\$ _____
k. <input type="checkbox"/> Continued on Attachment 2.k.	
3. <input checked="" type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify)	\$ <u>10,000,000.00</u>
when pursuing a judgment in the suit filed against you.	
Date: <u>December 11, 2007</u>	
<u>GREGORY C. KANE, Esq.</u>	

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

Page 1 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6025	
PLAINTIFF(S) / PETITIONER(S): Deborah L. Zappa	
DEFENDANT(S) / RESPONDENT(S): American General Life Companies et.al.	
ZAPPA VS. AMERICAN GENERAL LIFE COMPANIES	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00083735-CU-IC-CTL

Judge: Joan M. Lewis

Department: C-65

COMPLAINT/PETITION FILED: 12/12/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00083735-CU-IC-CTL

CASE TITLE: Zappa vs. American General Life Companies

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time; request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central		FOR COURT USE ONLY
PLAINTIFF(S): Deborah L. Zappa		
DEFENDANT(S): American General Life Companies et.al.		
SHORT TITLE: ZAPPA VS. AMERICAN GENERAL LIFE COMPANIES		
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)		CASE NUMBER: 37-2007-00083735-CU-IC-CTL

Judge: Joan M. Lewis

Department: C-65

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 12/14/2007

JUDGE OF THE SUPERIOR COURT

Exhibit B

ADRIENNE C. PUBLICOVER (SBN 161432)
MICHAEL K. BRISBIN (SBN 169495)
WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP
525 Market Street, 17th Floor
San Francisco, CA 94105
Telephone: (415) 433-0990
Facsimile: (415) 434-1370

Attorneys for Plaintiff

AMERICAN GENERAL LIFE INSURANCE COMPANY
erroneously sued as **AMERICAN GENERAL LIFE COMPANIES,**
and **AMERICAN GENERAL ASSURANCE COMPANY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DEBORAH L. ZAPPA, an individual,
Plaintiff,

v.

AMERICAN GENERAL LIFE
INSURANCE COMPANIES, AMERICAN
INSURANCE ADMINISTRATORS, and
AMERICAN GENERAL ASSURANCE
COMPANY, and DOES 1 through 20,

Defendants.

Case No.: 37-2007-00083735-CU-IC-CTL

**NOTICE TO STATE COURT AND TO
ADVERSE PARTY OF REMOVAL OF
ACTION TO FEDERAL COURT UNDER
28 U.S.C. Section 1441(a) & (b)**

[Diversity, 28 U.S.C. Section 1332]

Action Filed: December 12, 2007
Trial Date: N/A

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF,
DEBORAH L. ZAPPA, HER ATTORNEY OF RECORD, AMERICAN INSURANCE
ADMINISTRATORS and ITS ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that on February 19, 2008 Defendants AMERICAN
GENERAL LIFE INSURANCE COMPANY ("AGLIC"), erroneously sued as AMERICAN
GENERAL LIFE COMPANIES, and AMERICAN GENERAL ASSURANCE COMPANY
("AGAC"), ("collectively Defendants") filed in the United States District Court, Southern
District of California, San Diego Division, a Notice of Removal of this action to the District

**NOTICE TO STATE COURT AND TO ADVERSE PARTY OF REMOVAL OF ACTION
TO FEDERAL COURT UNDER 28 U.S.C. Section 1441(a) & (b)**

San Diego Superior Court Case #37-2007-00083735-CU-IC-CTL
325009.1

1 Court pursuant to 28 U.S.C. Section 1441(a) and (b) and 28 U.S.C. Section 1332 (diversity). A
2 copy of the Notice of Removal and its exhibits are attached hereto as **Exhibit 1**.

3 **PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. Section 1446 (d), the
4 filing of the Notice of Removal in the United States District Court, together with the filing of a
5 copy of this Notice of Removal with the Superior Court, effects the removal of this action.

6 Accordingly, the above-entitled State Court may not proceed further unless and until the
7 case is remanded.

8
9 Dated: February 19, 2008 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

10
11 By: 

ADRIENNE C. PUBLICOVER

MICHAEL K. BRISBIN

Attorneys for Defendants

AMERICAN GENERAL LIFE INSURANCE

COMPANY erroneously sued as AMERICAN

GENERAL LIFE COMPANIES, and AMERICAN

GENERAL ASSURANCE COMPANY

PROOF OF SERVICE

I am a citizen of the United States. I am over the age of eighteen years and am not a party to the within cause. I am employed in the City and County of San Francisco, California and my business address is 525 Market Street, 17th Floor, San Francisco, California 94105.

On this date I served the following document(s):

**NOTICE TO STATE COURT AND TO ADVERSE PARTY OF REMOVAL OF ACTION
TO FEDERAL COURT UNDER 28 U.S.C. Section 1441(a) & (b)**

on the part(y)(ies) identified below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

XXX: By First Class Mail -- I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection and delivery to the addressee(s) below following ordinary business practices.

By Personal Service -- I caused each such envelope to be given to a courier messenger who personally delivered each such envelope to the office of the address.

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Gregory C. Kane, Esq.
SHIFFLET, KANE & KONOSKE, LLP
16880 West Bernardo Drive, Suite 250
San Diego, CA 92127-1615
Tel: (858) 385-0871
Fax: (858) 613-0871

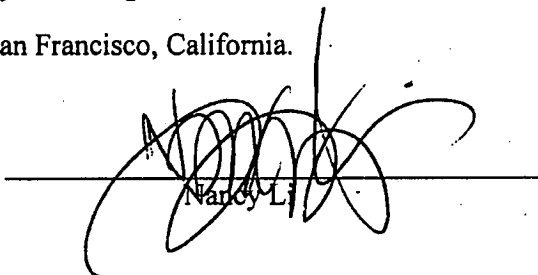
John D. Boyle, Esq.
Miguel Hernandez, Esq.
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633 West 5th Street, 51st Floor
Los Angeles, CA 90071
Tel: (213) 833-4500
Fax: (213) 833-4555

Attorneys for Plaintiff Deborah Zappa

*Attorneys for Defendant American Insurance
Administrators*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on February 19, 2008 at San Francisco, California.



JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings and other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is intended for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Deborah L. Zappa, an individual,

DEFENDANTS

American General Life Insurance Companies, American Insurance Administrators and American General Assurance Company, and Does 1 through 20

FILED
FEB 19 2008
CLERK, U.S. DISTRICT COURT S.
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gregory C. Kane, Esq.
SHIFFLET, KANE & KONOSKE, LLP
16880 West Bernardo Drive, Suite 250
San Francisco, CA 94105
Tel: (858) 385-0871 / fax: (858) 613-0871

ATTORNEYS (IF KNOWN)

Adrienne C. Publicover, Esq.
Michael K. Brisbin, Esq.
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
525 Market Street, 17th Floor, San Francisco, CA 94105
Tel: (415) 433-0990 / Fax: (415) 434-1370

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C. Sections 1332, 1391, 1441 & 1446

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 851 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 861 SSID Title XVI (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 881 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 882 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 883 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 884 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motion to Vacate Sentence			
	HABEAS CORPUS:			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Conditions			

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ N/A

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

Docket Number _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

February 19, 2008

Michael K. Brisbin, Esq.
Michael K. Brisbin, Esq.

147819 \$250 ser 2/20/08

CERTIFICATE OF SERVICE

I am a citizen of the United States. I am over the age of eighteen years and am not a party to the within cause. I am employed in the City and County of San Francisco, California and my business address is 525 Market Street, 17th Floor, San Francisco, California 94105.

On this date I served the following document(s):

CIVIL COVER SHEET

on the part(y)(ies) identified below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

XXX: By First Class Mail -- I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection and delivery to the addressee(s) below following ordinary business practices.

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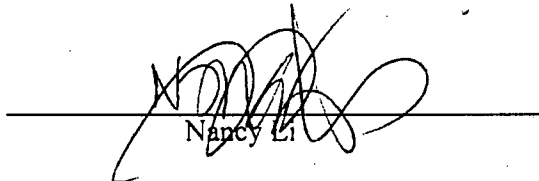
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Attorneys for Defendant American Insurance Administrators

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on **February 19, 2008** at San Francisco, California.



Nancy Li

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 147819 - SH
* * C O P Y * *
February 20, 2008
09:17:31**

Civ Fil Non-Pris

USAO #: 08CV0319

Judge.: MARILYN L HUFF

Amount.:

\$350.00 CK

Check#: BC66740

Total-> \$350.00

FROM: ZAPPA V. AMERICAN GENERAL LIFE